Supreme Court, U.S.
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No. 01-940

IN THE

Supreme Court of the United States

VENTURA GROUP VENTURES, INC.,

Petitioner,

v.

VENTURA PORT DISTRICT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

In 1978, as part of a taxpayer revolt, the voters of California approved Proposition 13, which added Article XIII A to the state's constitution. Among other things, the measure limits local agency property taxes to 1% of the property's assessed value. In the ensuing 20 years, both this Court and the California Supreme Court have upheld the constitutionality of Article XIII A.

Petitioner, Ventura Group Ventures (VGV) holds an unsatisfied money judgment against respondent, Ventura Port District (District), a California local public agency. The California Supreme Court held in this case that the 1% limit of Article XIII A prevents the District or Ventura County from levying additional property taxes in order to pay the judgment. As a result, the District did not have the ability to pay the judgment in full and its obligation to pay the judgment was discharged under Chapter 9 of the Bankruptcy Code.

Although the petition does not expressly say so, petitioner is asking this Court to hold that Article XIII A of the California Constitution, as definitively interpreted by the California Supreme Court, violates the federal Constitution, because it limits the District's ability to raise property taxes in order to satisfy petitioner's judgment in full.

Petitioner frames the Issues Presented for Review so as to imply that this case is about a state's interference with the inherent power of the state and federal judiciary. It is not. The power to enforce a judgment by mandating the levy of taxes is not an inherent power of the judiciary. Rather, it is within the province of a state to determine how judgments are to be enforced. Similarly, it is within the province of a state to establish the sources and limits on the revenues of its public agencies.

At bottom, what the petitioner seeks is a constitutional right to have state court judgments against public agencies paid in full. Although it cites various sections of the Constitution in

support of its request, petitioner has failed to establish — or even allege — any basis for such a constitutional right.

Petitioner's assertion of a constitutional right to have its judgment paid in full also ignores the fact that Congress has expressly provided, in Chapter 9 of the Bankruptcy Code, a means for local public agencies to adjust their debts. This Court has likewise upheld the constitutionality of the predecessor to Chapter 9.

Petitioner has not alleged a conflict between the circuits or any of the other traditional grounds for certiorari. Instead, petitioner alleges as a ground for certiorari that the Ninth Circuit did not consider petitioner's constitutional arguments. In fact, however, the Ninth Circuit did consider and deny each of the petitioner's arguments, by implication if not expressly. Although the Ninth Circuit did not devote much space to these arguments in its brief memorandum opinion, it clearly did not "refuse to consider them," as petitioner suggests, with the exception of petitioner's due process argument, which it held was waived. Pet., App. B at 6a. Any doubt was removed by the denial of petitioner's request for rehearing of the Ninth Circuit opinion, which listed each of the arguments that petitioner claims were not addressed. *See* Pet. at 10-11, App. L at 99a-115a. Petitioner at that time pointed out that it had raised its due process argument in its opening brief. *Id.* at 108a-110a. By denying the petition for rehearing, the Ninth Circuit implicitly ruled on the merits of the due process claim.

In short, there is no valid reason for granting certiorari in this case, and the petition should be denied.

A. The petition is untimely

Petitioner asserts, as a basis for jurisdiction, this Court's appellate jurisdiction over decisions of the California Supreme Court. Pet. at 1. Petitioner directs much of the petition to alleged errors in the California Supreme Court's opinion. However, petitioner fails to inform the Court that the time for seeking

review in this Court of the California Supreme Court's decision has long since expired. Petitioner's Petition for Rehearing in the California Supreme Court was denied March 28, 2001. *See* Pet. at 9. The petition was not filed until December 20, 2001. The petition is therefore timely only with respect to the Ninth Circuit order affirming the district court judgment.

Petitioner raised all of its federal constitutional arguments — the guarantee clause, due process, and taking of property without just compensation — in the California Supreme Court, which resolved them all against petitioner. *See* Pet., App. E at 23a-28a. It is too late to challenge that decision in this Court.

B. The Ninth Circuit was barred by the Tax Injunction Act and principles of comity from considering petitioner's constitutional claims

Instead of seeking review in this Court of the California Supreme Court decision, petitioner elected to go back to the Ninth Circuit and ask it to declare Proposition 13 unconstitutional. However, the Ninth Circuit was barred from doing so, because of the Tax Injunction Act, 28 U.S.C. § 1341, and principles of comity. The Act reads in full:

> The district courts shall not enjoin, suspend, or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The Tax Injunction Act prohibits federal courts from issuing a declaratory judgment holding state tax laws unconstitutional. *California v. Grace Brethren Church*, 457 U.S. 393, 407-411, 102 S. Ct. 2498, 2507-09, 73 L. Ed. 2d 93 (1982). At least two federal courts have already declined to review the constitutionality of Article XIII A on this ground. *See Marvin F. Poer and Co. v. Counties of Alameda*, 725 F.2d 1234 (9th Cir. 1984); *Berry v. Alameda Board of Supervisors*, 753 F. Supp. 1508 (N.D. Cal. 1990). The instant case is one for declaratory relief, so the Tax Injunction Act applies. Pet. at 4. This Court

should not grant certiorari in order to determine constitutional issues which were not properly before the Ninth Circuit.

C. Petitioner falsely characterizes its judgment as one for the taking of property without just compensation

Petitioner states that its judgment was one for the taking of property by the District without just compensation. Pet. at i, 3, 9, 11. Petitioner apparently wants to equate payment of its judgment with just compensation, in order to establish a constitutional right to payment of its judgment. Petitioner, however, fails to inform the Court that its judgment was for breach of contract only, and that its cause of action against the District for inverse condemnation was dismissed by the trial court prior to trial. (I AER 104.) Petitioner did not appeal from the judgment dismissing that cause of action.

D. Petitioner's constitutional arguments are founded on an erroneous premise

Petitioner makes arguments under three clauses of the Constitution: the guarantee clause, the due process clause, and the takings clause. Each of those arguments is founded upon a premise which was soundly rejected by the California Supreme Court, namely, that the California voters, when they adopted Proposition 13, improperly delegated the decision whether to pay judgments against a local entity to the local electors.[1] "At bottom, what petitioner is complaining of is not that article XIII A undermines this state's republican form of government, but that it permits local voters to deny petitioner recovery on its judgment in violation of due process of law and the takings clause." Pet., App. E at 24a. The short answer to all of petitioner's

1. VGV's argument is based on Article XIII A, Section 4 of the California Constitution, which provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

constitutional claims was given by the California Supreme Court: "Article XIII A does not nullify the judgment against the District. It simply restricts the ability of the District to raise taxes in order to pay the judgment. VGV is not thereby denied all means of satisfying its judgment." *Id.*

The California Supreme Court upheld Article XIII A in the face of multiple state and federal constitutional challenges in *Amador Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization*, 22 Cal.3d 208 (1978), including the "republican form of government" challenge raised by petitioner here. *Id.* at 227. This Court has also upheld the constitutionality of Article XIII A against equal protection claims. *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992).

In addition, this Court has specifically rejected the claim that due process of law requires public agencies to pay their debts in full. Chapter 9 of the Bankruptcy Code (11 U.S.C. §§ 901-946) allows local public agencies such as the District to adjust their debts. In *United States v. Bekins*, 304 U.S. 27, 54, 58 S. Ct. 811, 817-818, 82 L. Ed. 1137 (1938), this Court upheld the predecessor to Chapter 9 against a claim based on the due process and takings clauses of the Fifth Amendment. *See also In re Corcoran Irr. Dist.*, 27 F. Supp. 322, 328 (S.D. Cal. 1939), *aff'd*, 114 F.2d 690 (9th Cir. 1940), *cert. denied sub nom. Newhouse v. Corcoran Irr. Dist.*, 311 U.S. 717, 61 S. Ct. 440, 85 L. Ed. 467 (1941) ("[T]he reduction of debts being of the essence of the power of bankruptcy, there is no violation of due process.")

CONCLUSION

Petitioner has shown no legitimate basis for certiorari. The decision of the California Supreme Court is no longer reviewable. Even if it were, petitioner has shown no conflict with other decisions, and certainly no compelling reason to overturn the tax limitations contained in Article XIII A of the California Constitution.

The petition should be denied.

Respectfully submitted,

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